

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

1139*52 Comp Gen 587 overruled*

FILE:

B-176934

DATE: JUL 26 1976

61202

MATTER OF:

Hugh J. Hyde - Standby duty*098912
uag912***DIGEST:**

Based upon the determination of the Court of Claims in Hugh J. Hyde v. United States, Ct. Cl. No. 322-73, decided April 16, 1976, 52 Comp. Gen. 587 (1973), which denied petitioner Hyde overtime compensation for time spent in a standby status, is overruled. Where petitioner's performance of the Duty Security Officer function required him to remain at his residence located within the limits of his duty station, the Court found that, under the particular circumstances, his whereabouts were narrowly limited and his activities substantially restricted so as to entitle him to overtime compensation.

This action is in response to a request by Mr. Hugh J. Hyde for reconsideration of our decision in 52 Comp. Gen. 587 (1973) denying him overtime compensation for time claimed to have been spent in a standby status. His request is based on the favorable disposition of the same issue by the Court of Claims in Hugh J. Hyde v. United States, Ct. Cl. No. 322-73, decided April 16, 1973. Incident to that request, Mr. Hyde seeks recovery of overtime compensation for the period prior to August 23, 1967, during which he served as Duty Security Officer at the Naval Ship Research and Development Center, Acoustic Research Detachment, Bayview, Idaho. A part of that period is not covered by the Court of Claims judgment because it is outside the 6-year statute of limitations applicable to the Court of Claims, but it is within the 10-year period that was allowed for claims filed with this Office under the Barring Act, 31 U.S.C. § 71a, as in effect when Mr. Hyde filed his claim.

The facts relied on by this Office in previously denying Mr. Hyde's claim for overtime compensation are set forth in 52 Comp. Gen. 587, supra. Based on those facts we were unable

PUBLISHED DECISION

55 Comp. Gen.

B-176934

to conclude that the Navy's determination that his whereabouts were not narrowly limited and that his activities were not substantially restricted was incorrect. In the absence of any showing that Mr. Hyde received a substantial number of calls or alarms which would militate toward a contrary conclusion, we were unable to find that the time spent by Mr. Hyde while serving as Duty Security Officer was spent predominantly for the Navy's benefit so as to entitle him to overtime compensation.

Contrary to information we relied on that emergency calls occurred from six to eight times per year, the Court of Claims found that the Duty Security Officer was called upon irregularly for emergencies between 40 and 50 times a year. Based on the facts adduced at trial, including the particularly significant finding that Mr. Hyde received a substantial number of emergency calls, the Court of Claims held that the circumstances under which the Duty Security Officer function was performed met the criteria of the Civilian Manpower and Management Instruction No. 610-S1-A-1(c)(1) as interpreted by the Navy for payment of overtime compensation for time spent in a standby status. Specifically, the Court found that while performing the Duty Security Officer function, Mr. Hyde's whereabouts were narrowly limited and his activities substantially restricted. The following excerpt from the Trial Judge's opinion as adopted by the Court summarizes the basis for that determination:

"The fact remains that in the instant case, the only freedom available to plaintiff was to return to his family; he could not shop, visit nearby relatives, or enjoy any recreational activities, all of which were located off the base. The ARD station was far removed from any metropolitan area, for Bayview, Idaho, a township with one general store, a few taverns, and a population of 300, was 40 miles from Spokane, Washington, population of 184,000; and 330 miles from Seattle, population of 565,000. Thus, although plaintiff could engage in any activity he desired when not actually working, in fact there were virtually no activities for him to engage in.

"Another striking similarity between plaintiff's case and that of Detling is the degree of preparedness required in order to respond to emergencies. The Court in Detling found great significance in the fact that the plaintiffs were to 'be immediately available in case of an emergency.' This degree of readiness appears even more pronounced in the instant case, where the DSO's were required to respond as often as 50 times a year, the possibility of an emergency being sufficiently great so that plaintiff was never able to relax completely. Thus, plaintiff's officer in charge testified: 'I required my duty officers to be on alert and be ready to handle anything that came up immediately.'

"It is clear, then, that plaintiff (1) was substantially limited in his movements, (2) was significantly restricted in his activities, and (3) was in a state of ready alert to respond to an emergency, even when not performing actual work in his function as DSO. This represents a degree of restriction sufficient to satisfy even the most stringent guidelines established by CSC in its regulation of general schedule employees. Since plaintiff meets the stringent criteria established by the CSC, he also meets the criteria of the Navy regulation as interpreted by defendant. Accordingly, he is entitled to compensation."

Based upon the Court of Claims' determination of entitlement under the facts as found in Hugh J. Hyde v. United States, supra, our decision at 52 Comp. Gen. 587 is overruled. Our Claims Division has been instructed to determine and pay the overtime compensation due Mr. Hyde based upon his original claim insofar as compensation therefor has not been provided for under the judgment entered in the Hyde case and to the extent otherwise proper. Claims of other individuals for performance of the Duty Security Officer function at the Navy's Bayview test facility may be similarly allowed.

R.F. KELLER
[Deputy] Comptroller General
of the United States